



## INTERIOR BOARD OF INDIAN APPEALS

Mrs. Evan Newcomb v. Muskogee Area Director, Bureau of Indian Affairs

3 IBIA 212 (12/23/1974)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ADMINISTRATIVE APPEAL OF MRS. EVAN NEWCOMB

v.

## AREA DIRECTOR, MUSKOGEE, AND ALL OTHER PARTIES IN INTEREST

IBIA 75-33-A

Decided December 23, 1974

Appeal from a decision of the Area Director, Muskogee, canceling a five-year farming, grazing lease.

Docketed, affirmed and appeal dismissed.

### 1. Indian Lands: Leases and Permits: Generally

A lease executed and approved by an approving officer for a greater term than is permitted by 25 CFR 131.2(a)(3) is void as to the overage of the term.

### 2. Administrative Procedure: Generally

An appeal filed by a person who is not a party in interest will be dismissed.

APPEARANCES: Mrs. Evan Newcomb, pro se.

## OPINION BY CHIEF ADMINISTRATIVE JUDGE MCKEE

The appeal is from a decision of the Area Director, Muskogee, issued September 19, 1974, in which he canceled farming and grazing lease No. 1600 covering the restricted interests in the Ton-gah-hah Beaver Quapaw allotment 152/136. The lease was executed October 22, 1971, by the Superintendent of the Miami Agency for several owners of small fractional interests and for the undetermined heirs of Anna Beaver Bear Hallam, deceased, lessors, and by "E. Newcomb" lessee. The lease term was for five years from January 1, 1972, through December 31, 1976.

The record of all proceedings conducted prior to and incident to the issuance of the Area Director's decision was received by the Board on December 11, 1974

By delegation of authority on December 14, 1973, amending 211 DM 13.7, the Secretary directed that appeals from the administrative decisions of the Bureau of Indian Affairs shall be decided by the Board of Indian Appeals.

NOTICE IS HEREBY GIVEN: that a timely appeal has been filed by Mrs. Evan Newcomb, hereinafter referred to as appellant and is hereby docketed by the Board of Indian Appeals.

[1] The Area Director's decision and Notice of Cancellation of the lease issued September 19, 1974, was addressed to Evan Newcomb and included the following language:

It is our finding that this is not a valid permit in that the approving officer exceeded his authority as set forth by 25 CFR 131 and subsequent delegations through this office from the Secretary of the Interior.

Briefly, this is spelled out by the following excerpts from 25 CFR:

131.2(a) The Secretary may grant leases on individually owned land on behalf of: \* \* \* (3) the undetermined heirs of a decedent's estate; \* \* \*

131.8(e) Leases granted by the Secretary pursuant to 131.2(a)(3) shall be for a term of not to exceed two years \* \* \*.

All authority for surface leasing under 25 CFR 131, limited to a maximum term of five years, has been delegated to the Agency Superintendent.

In the subject case, we find that the approving officer exceeded his authority by granting and approving the lease for a longer period than a term of two years.

The Area Director then declared the lease "null and void" effective in thirty days, subject to the right of appeal.

The only document in the record opposing cancellation of the lease is the appeal letter of September 23, 1974, addressed to the Commissioner of Indian Affairs in which hardship is alleged, but it does not include any legal defense to the Area Director's decision of cancellation.

[2] Moreover, the letter in typewritten form, prepared for the signature of "Evan Newcomb," bears the actual signature of "Mrs. Evan Newcomb" who is not a party to the lease.

On the record before us a finding is made that the lessee presents no defense, and that he has not timely filed an appeal. The appellant before us is not a party in interest and has no standing before us. The matter should be disposed of promptly.

IT IS ORDERED that the appeal shall be and the same is hereby DISMISSED.

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//original signed  
David J. McKee  
Chief Administrative Judge

I concur:

\_\_\_\_\_  
//original signed  
Alexander H. Wilson  
Administrative Judge